

PT 01-1
TAX TYPE: PROPERTY TAX
ISSUE: CHARITABLE OWNERSHIP/USE

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

PROVENA
SENIOR SERVICES
APPLICANT

v.

DEPARTMENT OF REVENUE
STATE OF ILLINOIS

No: 99-PT-0022
(98-45-0019)

Real Estate Exemption
for 1998 Tax Year

P.I.N: 19-27-206-005

Kane County Parcel

Alan I. Marcus
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Michael D. Kramer of Barmann, Kramer & Bohlen on behalf of Provena Senior Services (hereinafter the "applicant").

SYNOPSIS: This proceeding raises the limited issue of whether real estate identified by Kane County Parcel Index Number 09-27-206-005 (hereinafter the "subject property") was in exempt ownership, as required by Section 15-65 of the Property Tax Code, (35 ILCS 200/1-1 *et seq*) during the 1998 assessment year.

The controversy arises as follows:

Applicant filed an Application for Property Tax Exemption with the Kane County Board of Review on September 30, 1998. Dept. Ex. No. 1. The Board reviewed applicant's complaint and recommended to the Illinois Department of Revenue

(hereinafter the "Department") that the requested exemption be granted. *Id.* After reviewing the Board's recommendation, the Department issued a determination denying the requested exemption, on grounds that the subject property is not in exempt ownership, on March 15, 1999. Dept Ex. No. 2. Applicant thereafter filed a timely appeal as to this denial and subsequently presented evidence at a formal evidentiary hearing. Following submission of all evidence and a careful review of the record, it is recommended that the Department's exemption denial be affirmed.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position therein are established by the admission into evidence of Dept. Ex. Nos. 1, 2.
2. The Department's position in this matter is that the subject property is not in exempt ownership. Dept. Ex. No. 2.
3. The subject property is located at 611 Allen Lane, St. Charles, IL 60174 and improved with a 50,000 square foot nursing home. Dept. Ex. No. 1.
4. Applicant was originally incorporated as a not-for-profit corporation in the State of Illinois on December 6, 1982. Its original corporate name, "HealthCor," was changed to "Cor Unum" pursuant to an amendment to applicant's Articles of Incorporation dated on April 18, 1996. Applicant Ex. No. 5.
5. Cor Unum subsequently filed Articles of Merger, pursuant to which it merged with three other constituent corporations, on July 31, 1996.¹ The survivor corporation, also known as Cor Unum, changed its name to Provena Senior

¹ . The details of this merger are not pertinent to the outcome herein. However, those interested in such details are referred to Applicant Ex. No. 5.

Services pursuant to documents filed with the Illinois Secretary of State on November 26, 1997. Applicant Ex. No. 5; Tr. pp. 12-13, 21-22.

6. These documents indicate, *inter alia*, that applicant's basic corporate purposes are to: (1) conduct the affairs of Catholic-identified healthcare facilities which include, but are not limited to, independent senior living institutions; and, (2) offer at all times high quality and cost effective healthcare and human services to the consuming public. Applicant Ex. No. 5.
7. Applicant's by-laws provide, *inter alia*, that it shall admit and treat individuals without regard to race, sex, national origin or ability to pay. Applicant Ex. No. 7; Tr. p. 23.
8. Applicant is exempt from federal income tax, under Section 501(c)(3) of the Internal Revenue Code, pursuant to a Group Letter Ruling which the Internal Revenue Service issued to the United States Catholic Conference on March 25, 1946. This exemption remained in full force and effect throughout the 1998 tax year. Applicant Ex. Nos 8, 9; Tr. p. 23.
9. Applicant did not hold any ownership interest in the subject property throughout 1998. Applicant Ex. No. 1.
10. Applicant obtained a leasehold interest in the subject property pursuant to a "Lease Assignment, Assumption and Modification" (hereinafter the "lease") dated November 25, 1997. It maintained this interest throughout 1998. *Id.*

11. The parties to this lease are, for present purposes,² as follows:

Party	Interest(s) in the Lease
The Klapmeier Investment Limited Partnership (hereinafter “Klapmeier”), a limited partnership duly organized and existing under the laws of the State of Wisconsin.	Landlord
Advocate Health and Hospitals Corporation (hereinafter “Advocate”), an Illinois not-for-profit corporation.	Lessee And Assignor
Applicant	Assignee

Applicant Ex. No. 1; Tr. pp. 12-13.

12. Salient provisions of the lease are as follows:³

Term/Condition	Rights/Responsibilities
Assignment	<ul style="list-style-type: none">• Advocate assigns the entirety of its previously-held leasehold interest in the subject property to applicant.
Original Term of Lease	<ul style="list-style-type: none">• 34-year term running through November 30, 2018.
Option to extend	<ul style="list-style-type: none">• Applicant is given an option to extend the term of the lease for four (5) successive five (5) year periods.

2. There are other parties to the lease. All of these parties have some sort of affiliation to one of the entities shown on the table. However, the interests of these affiliated parties have no affect on the outcome herein.

3. For further details about the terms and conditions of the lease, *see*, Applicant Ex. No. 1.

Term/Condition (Cont'd)	Rights/Responsibilities
Rent	<ul style="list-style-type: none"> • Applicant was to pay Klapmeier rent in the amount of \$440,000 per year during the 1998 assessment year; • Rent was payable in monthly installments.
Insurance & Indemnity	<ul style="list-style-type: none"> • Applicant shall, at its own expense, carry all appropriate forms of insurance including, <i>inter alia</i>, rent and use, fire, vandalism, public liability and business activity insurance; • Applicant shall also indemnify and hold harmless Klapmeier against and from any claims, damages, expenses, etc. that arise from the conduct or management of the business conducted by applicant on the subject property.
Repairs & Maintenance	<ul style="list-style-type: none"> • Applicant shall, at its own cost and expense, keep and maintain all areas of the subject property in good and safe working order throughout the term of the lease; • Applicant is authorized to, but need not make, any alterations, repairs, additions or improvements to the property which it may deem desirable for the conduct of its business therein.
Taxes	<ul style="list-style-type: none"> • Applicant shall pay any and all real estate taxes and other similar assessments levied against the subject property when due.

Id; Tr. pp. 12-20

CONCLUSIONS OF LAW:

An examination of the record establishes that this applicant has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject property from 1998 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that the subject property was not in exempt ownership, as required by 35 **ILCS** 200/15-65, should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 states as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code, (35 **ILCS** 200/1-1 *et seq*). The provisions of that statute which govern disposition of this case are found in Sections 200/15-65(a) and 15-65(c). Those provisions state, in pertinent part, that:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity.

(c) old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption the applicant provides affirmative

evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code [26 U.S.C.A. Section 501] or its successor, and either: (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services ..[.]

35 ILCS 200/15-65.

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994).

Here, the relevant statutory exemptions pertain to "institutions of public charity" (Section 200/15-65(a)) and "old people's homes" (Section 200/15-65(c)). The statutory requirements for exemption under both provisions are: (1) exempt ownership; and, (2) exempt use. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968); Fairview Haven v. Department of Revenue, 153 Ill. App.3d 763 (4th Dist. 1987). Only the former requirement is at issue herein, as the instant denial was predicated solely on lack of exempt ownership. Dept. Ex. No. 2. Therefore, I shall forego further discussion of the exempt use requirement and focus all remaining analysis on the issue of exempt ownership.

Analysis of that issue begins with recognition of the central fact herein, which is that applicant did not own the subject property during 1998. Rather, it leased said property from Klapmeier. The first step in determining whether leased property is exempt is to consider whether the lessor qualifies for exempt status. Victory Christian Church v. Department of Revenue, 264 Ill. App. 3d 919 (1st Dist. 1988). (Private individual/owner denied property tax exemption even though he leased subject property to a religious organization that used leasehold for exempt religious and school purposes). Applicant submitted little evidence pertaining to Klapmeier. However, the evidence it did submit⁴ establishes that Klapmeier is a non-exempt commercial partnership.

Real estate does not qualify for exemption unless it is owned and used in the manner prescribed by statute. North Shore Post No. 21 of the American Legion v. Korzen, 38 Ill.2d 231, 234 (1967). The applicable statute prescribes, in relevant part, that the property be owned by specific types of entities. See, 35 **ILCS** 200/15-65(a), (c). Klapmeier is not an “institution of public charity” within the meaning of Section 15-65(a). Nor is Klapmeier any of the entities, including “old people’s homes,” described in Section 15-65(c). Therefore, the fact that Klapmeier leases the subject property to applicant, which in turn uses the subject property as a nursing home, is legally insufficient to establish conformity with the applicable exempt ownership requirements.

The facts that applicant is contractually obligated to pay all property taxes on the subject property (Applicant Ex. No. 1), and holds title insurance thereon (Applicant Ex. No. 2), do not alter the preceding conclusion. Applicant agreed to pay such taxes as part of an arm’s length business transaction with Klapmeier. Accordingly, such agreement

4. The only evidence of record that contains any references to Klapmeier’s organizational structure is Applicant Ex. No. 1, which is applicant’s lease with Klapmeier.

was merely part and parcel of the consideration that applicant bargained for and gave in exchange for its leasehold interest in the subject property. Moreover, the case of Christian Action Ministry v. Department of Revenue, 56 Ill. App.3d 102 (1st Dist. 1977) (hereinafter “CAM”), wherein the property was held exempt partially because the applicant therein was liable for property taxes, is readily distinguishable from this case.

The precise issue decided in CAM was whether the applicant, which derived its interest in the property interest from a contract for deed, satisfied the exempt ownership requirement even though it did not hold legal title to the property. The court held in the affirmative. However, it was careful to stress that, in addition to being liable for property taxes, CAM had also made: (1) a significant (\$30,000.00) down payment on the contract; and, (2) substantial (\$2,500.00) monthly payments on a regular payments throughout the tax year in question. CAM at 103, 105.

Here, applicant derives its interest in the subject property from a lease, not a contract for deed. This distinction is important because the former does not allow applicant to develop or acquire any equity in the subject property. Nor does the lease does not contain any provision that vests applicant with legal title to the property when its financial commitments are paid in full. *See*, CAM at 103. Rather, the lease merely enables applicant to continuously maintain the very same interest, a leasehold, that it received at the outset of the term. Hence, while applicant does make “substantial” monthly rental payments⁵ to maintain that interest, those payments do not allow applicant to develop any type of ownership interest in the subject property throughout the term of the lease.

The lease also vests Klapmeier with a reversionary interest in the subject property. This interest enables Klapmeier to recover possession of the subject property at the conclusion of the lease term. *Id.* The legal titleholder in CAM, *supra*, could not have made a similar recovery because it was contractually obligated to transfer title to CAM as soon as the latter fulfilled its financial responsibilities under the contract for deed. CAM at 103. Based on this distinction, and those set forth above, I conclude that applicant's interest in the subject property is not akin to that of the applicant in CAM, *supra*. Therefore, I decline to apply the holding therein to the facts of this case.

Furthermore, the acquisition of title insurance reasonably appears to be a business decision attuned to protecting applicant's pecuniary interest in the subject property. Given all of the other circumstances of this matter, neither this factor nor applicant's payment of property taxes vest applicant with an ownership interest in the subject property that entitles applicant to the benefit of the tax exemption. Therefore, the Department's determination that the subject property was not in exempt ownership throughout the 1998 tax year should be affirmed.

WHEREFORE, for all the above-stated reasons, it is my recommendation that real estate identified by Kane County Parcel Index Number 09-27-206-005 not be exempt from 1998 real estate taxes under Sections 15-65(a) and 15-65(c) of the Property Tax Code.

October 31, 2000
Date

Alan I. Marcus
Administrative Law Judge

5. The lease (Applicant Ex. No. 1) fails to disclose the precise amount of these monthly payments. However, it does disclose that applicant was required to make \$440,000.00 in yearly rental payments during the tax year in question. Thus, $12/\$440,000.00=\$36,666.67$ in monthly rental payments.